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FILE: [REDACTED]  
[EAC 99 198 51273]

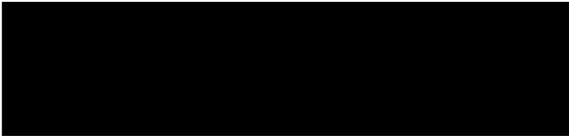
OFFICE: VERMONT SERVICE CENTER

DATE: DEC 13 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant was inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions.

On appeal, counsel requests a waiver of inadmissibility on the grounds that the applicant was convicted of less than 30 grams of cannabis.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or
    - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On August 19, 1993, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] (arrest date August 2, 1993), the applicant was indicted for Count 1, unlawful sale or purchase of cannabis, a felony; and Count 2, unlawful possession of cannabis, a misdemeanor. On April 22, 1994, the applicant entered a plea of guilty as to both Counts 1 and 2. He was sentenced to 4 days, credit for time served, and ordered to pay \$255 in fines and costs.
- (2) On February 18, 1994, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, Case No. [REDACTED] (arrest date February 15, 1994), the applicant was convicted of possession of stolen property, a misdemeanor.
- (3) On April 19, 1994, the applicant was arrested and charged with Count 1, lewd and lascivious behavior, a misdemeanor; Count 2, indecent exposure, a misdemeanor; and Count 3, resisting arrest without violence, a misdemeanor. On April 29, 1994, in the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida, under Case No. [REDACTED], the applicant was convicted of Counts 1 and 3, and he was placed on probation for a period of 6 months. A *nolle pros* was entered as to Count 2. The court record shows that on November 8, 1995, the applicant violated the terms of his probation.

- (4) The Federal Bureau of Investigation fingerprint results report shows that on January 2, 1995, in Dade County, Florida, the applicant was arrested for resisting an officer without violence. The FBI report indicates that the applicant was subsequently convicted on January 3, 1995, of obstructing justice-false information. However, the actual final court disposition of this arrest is not contained in the record.
- (5) The records of the Commonwealth of Massachusetts, Criminal Justice Information System, shows that on November 25, 2000, the applicant was arrested and charged with Count 1, "LEAVE SCENE OF PROPERTY DAMAGE c90 S24;" and Count 2, "MARKED LANES VIOLATION c89 S4A" (Docket No. [REDACTED]). The final court disposition of this arrest is not contained in the record.

The applicant is ineligible for TPS due to his one felony and four misdemeanor convictions (detailed in Nos. 1, 2, and 3 above), because he failed to submit the final court dispositions of his arrests (Nos. 4 and 5 above), and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his drug-related convictions. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Despite counsel's request for a waiver of inadmissibility on the grounds that the applicant was convicted of less than 30 grams of cannabis, there is no waiver available to TPS applicants found inadmissible under this section. See 8 C.F.R. § 244.3(c)(1). Furthermore, the applicant's two drug convictions are not that of "a single offense of simple possession" of thirty grams or less of marijuana. Section 212(h) of the Act. Consequently, the director's decision to deny the TPS application will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.